REMARKS

This is a full and timely response to the outstanding non-final Office Action mailed 2008-01-17 (Paper No. 20080114). Upon entry of this response, claims 1-5, 16-18, 21-23, 25-27, 32, 34-35, 38-40, and 42-59 are pending in the application. In this response, claims 1-5, 17, 21-22, 25-27, 32, 38-39, 42, 44-47, 51-52, and 55-59 have been amended. Applicant respectfully requests that the amendments being filed herewith be entered and request that there be reconsideration of all pending claims.

1. Rejection of Claims 1-5, 32, 34-35, 38-45, 52-55, and 57-59 under 35 U.S.C. §103

Claims 1-5, 32, 34-35, 38-45, 52-55, and 57-59 are rejected under §103(a) as allegedly obvious over *LaJoie et al.* (5,850,218) in view of *Eick et al.* (U.S. 5,812,124). Applicant respectfully traverses this rejection. It is well established at law that, for a proper rejection of a claim under 35 U.S.C. §103 as being obvious based upon a combination of references, the cited combination of references must disclose, teach, or suggest (either implicitly or explicitly) all elements/features/steps of the claim at issue. *See, e.g., In re Dow Chemical*, 5 U.S.P.Q.2d 1529, 1531 (Fed. Cir. 1988); *In re Keller*, 208 U.S.P.Q.2d 871, 881 (C.C.P.A. 1981).

a. Independent Claims 1 and 59

Claims 1 and 59 are amended to recite "configuring each index in a continuous sequence of variably sized user-selectable ***index ranges***…the size of each of the index ranges based on a predetermined threshold number of media titles" (emphasis added). Applicant respectfully submits that the proposed combination fails to teach, disclose, or suggest at least this feature. *LaJoie et al.* appears to disclose a single sequence of indices, one index for each letter (letters A, B, C, D, and E in Fig. 22), rather than "index ranges" as recited in claims 1 and 59. Turning to *Eick et al.*, Applicant will assume, for the sake of argument, that the rows in FIGs. 16-19 of *Eick et al.* are ranges. Even so, *Eick et al.* does not teach the rows are variably sized,

much less that the size of each row is "based on a predetermined threshold number of media titles".

In discussing the teachings of *Eick et al.*, the Office Action (p. 7) alleges that "[s]ince the threshold is a variable (MAXDISPLAY) (Col. 91-92), each of the indices is variably sized". Applicant respectfully submits that the premise of the allegation is faulty, and as such the conclusion is unsupported. First, the Office Action has not shown that MAXDISPLAY in the source code appearing at Col. 91-92 of *Eick et al.* corresponds to the claimed "threshold". The only reference to MAXDISPLAY in the cited portion of the code is a comment describing NUMDISPLAY as "Number of items in close up". Applicant submits that this single cryptic reference does not teach that MAXDISPLAY is a threshold, or has anything to do with a threshold. Second, the single appearance of MAXDISPLAY in the cited source code is a declaration of MAXDISPLAY as a ***constant value***, which is the opposite of "variably sized".

Eick et al. does disclose, in connection with the screens in FIGs. 15-19, that each rows has no more than a fixed number of entries. ("First, all alphabetic titles are sorted into groups of five or less"; *Eick et al.*, Col. 9, lines 60-61.) *Eick et al.* further explains that the number of entries per row is small enough to allow the viewer to "make a reasoned selection therefrom" (Col. 2, lines 30-40). Applicant respectfully submits, however, that this is not the same as teaching variably-sized rows: since the alphabet has a fixed number of letters N, and there are R rows, the number of entries per row is not variable, but is fixed at N/R. Furthermore, even assuming (for the sake of argument) that the rows in *Eick et al.* are variably sized, *Eick et al.* does <u>not</u> teach that the size is related to a "number of media titles" as required by claims 1 and 59.

Accordingly, the proposed combination of *LaJoie et al.* in view of *Eick et al.* does not teach at least the above-described features recited in claims 1 and 59. Therefore, a *prima facie* case establishing an obviousness rejection has not been made, and the rejection should be withdrawn.

b. Independent Claim 2

Claim 2 is amended to recite "determining a range of values… corresponding to each index in a continuous sequence of variably sized user-selectable ***index ranges***, the size of each of the index ranges based on a predetermined threshold number of media titles" (emphasis added). Applicant respectfully submits that the proposed combination fails to teach, disclose, or suggest at least this feature. *LaJoie et al.* appears to disclose a single sequence of indices, one index for each letter (letters A, B, C, D, and E in Fig. 22), rather than "index ranges" as recited in claim 2. Turning to *Eick et al.*, Applicant will assume, for the sake of argument, that the rows in FIGs. 16-19 of *Eick et al.* are ranges. Even so, *Eick et al.* does not teach the rows are variably sized, much less that the size of each row is "based on a predetermined threshold number of media titles".

In discussing the teachings of *Eick et al.*, the Office Action (p. 7) alleges that "[s]ince the threshold is a variable (MAXDISPLAY) (Col. 91-92), each of the indices is variably sized". Applicant respectfully submits that the premise of the allegation is faulty, and as such the conclusion is unsupported. First, the Office Action has not shown that MAXDISPLAY in the source code appearing at Col. 91-92 of *Eick et al.* corresponds to the claimed "threshold". The only reference to MAXDISPLAY in the cited portion of the code is a comment describing NUMDISPLAY as "Number of items in close up". Applicant submits that this single cryptic reference does not teach that MAXDISPLAY is a threshold, or has anything to do with a threshold. Second, the single appearance of MAXDISPLAY in the cited source code is a declaration of MAXDISPLAY as a ***constant value***, which is the opposite of "variably sized".

Eick et al. does disclose, in connection with the screens in FIGs. 15-19, that each rows has no more than a fixed number of entries. ("First, all alphabetic titles are sorted into groups of five or less"; *Eick et al.*, Col. 9, lines 60-61.) *Eick et al.* further explains that the number of entries per row is small enough to allow the viewer to "make a reasoned selection therefrom" (Col. 2, lines 30-40). Applicant respectfully submits, however, that this is not the same as

teaching variably-sized rows: since the alphabet has a fixed number of letters N, and there are R rows, the number of entries per row is not variable, but is fixed at N/R. Furthermore, even assuming (for the sake of argument) that the rows in *Eick et al.* are variably sized, *Eick et al.* does not teach that the size is related to a "number of media titles" as required by claim 2.

Accordingly, the proposed combination of *LaJoie et al.* in view of *Eick et al.* does not teach at least the above-described features recited in claim 2. Therefore, a *prima facie* case establishing an obviousness rejection has not been made, and the rejection should be withdrawn.

c. Independent Claim 52

Claim 52 is amended to recite "a processor configured to…determine a range of values…corresponding to each index in a continuous sequence of variably sized user-selectable ***index ranges***, the size of each of the index ranges based on a predetermined threshold number of media titles" (emphasis added). Applicant respectfully submits that the proposed combination fails to teach, disclose, or suggest at least this feature. *LaJoie et al.* appears to disclose a single sequence of indices, one index for each letter (letters A, B, C, D, and E in Fig. 22), rather than "index ranges" as recited in claim 52. Turning to *Eick et al.*, Applicant will assume, for the sake of argument, that the rows in FIGs. 16-19 of *Eick et al.* are ranges. Even so, *Eick et al.* does not teach the rows are variably sized, much less that the size of each row is "based on a predetermined threshold number of media titles".

In discussing the teachings of *Eick et al.*, the Office Action (p. 7) alleges that "[s]ince the threshold is a variable (MAXDISPLAY) (Col. 91-92), each of the indices is variably sized". Applicant respectfully submits that the premise of the allegation is faulty, and as such the conclusion is unsupported. First, the Office Action has not shown that MAXDISPLAY in the source code appearing at Col. 91-92 of *Eick et al.* corresponds to the claimed "threshold". The only reference to MAXDISPLAY in the cited portion of the code is a comment describing

NUMDISPLAY as "Number of items in close up". Applicant submits that this single cryptic reference does not teach that MAXDISPLAY is a threshold, or has anything to do with a threshold. Second, the single appearance of MAXDISPLAY in the cited source code is a declaration of MAXDISPLAY as a ***constant value***, which is the opposite of "variably sized".

Eick et al. does disclose, in connection with the screens in FIGs. 15-19, that each rows has no more than a fixed number of entries. ("First, all alphabetic titles are sorted into groups of five or less"; *Eick et al.*, Col. 9, lines 60-61.) *Eick et al.* further explains that the number of entries per row is small enough to allow the viewer to "make a reasoned selection therefrom" (Col. 2, lines 30-40). Applicant respectfully submits, however, that this is not the same as teaching variably-sized rows: since the alphabet has a fixed number of letters N, and there are R rows, the number of entries per row is not variable, but is fixed at N/R. Furthermore, even assuming (for the sake of argument) that the rows in *Eick et al.* are variably sized, *Eick et al.* does <u>not</u> teach that the size is related to a "number of media titles" as required by claim 52.

Accordingly, the proposed combination of *LaJoie et al.* in view of *Eick et al.* does not teach at least the above-described features recited in claim 52. Therefore, a *prima facie* case establishing an obviousness rejection has not been made, and the rejection should be withdrawn.

d. <u>Dependent Claims 3-5, 32, 34-35, 38-45, 53-55, and 57-58</u>

Since independent claims 1-2, 52, and 59 are allowable, Applicant respectfully submits that claims 3-5, 32, 34-35, 38-45, 53-55, and 57-58 are allowable for at least the reason that each depends from an allowable claim. *In re Fine*, 837 F.2d 1071, 5 U.S.P.Q. 2d 1596, 1598 (Fed. Cir. 1988). Therefore, Applicant respectfully requests that the rejection of claims 3-5, 32, 34-35, 38-45, 53-55, and 57-58 be withdrawn.

2. Rejection of Claims 16 and 48 under 35 U.S.C. §103

Claims 16 and 48 are rejected under §103(a) as allegedly obvious over *LaJoie et al.* (U.S. 5,850,218) in view of *Eick et al.* (U.S. 5,812,124) and *Knudson et al.* (U.S. 2005/02024387). Applicant respectfully traverses this rejection. The addition of *Knudson et al.* does not cure the deficiencies of *LaJoie et al.* and *Eick et al.* as discussed above in connection with independent claims 1 and 2. Since independent claims 1 and 2 are allowable, Applicant respectfully submits that claims 16 and 48 are allowable for at least the reason that each depends from an allowable claim. *In re Fine*, 837 F.2d 1071, 5 U.S.P.Q. 2d 1596, 1598 (Fed. Cir. 1988). Therefore, Applicant respectfully requests that the rejection of claims 16 and 48 be withdrawn.

3. Rejection of Claims 17-18, 25-27, 46-47, 49-51, and 56 under 35 U.S.C. §103

Claims 17-18, 25-27, 46-47, 49-51, and 56 are rejected under §103(a) as allegedly obvious over *LaJoie et al.* (U.S. 5,850,218) in view of *Eick et al.* (U.S. 5,812,124) and *Young et al.* (U.S. 5,808,608). Applicant respectfully traverses this rejection. It is well established at law that, for a proper rejection of a claim under 35 U.S.C. §103 as being obvious based upon a combination of references, the cited combination of references must disclose, teach, or suggest (either implicitly or explicitly) all elements/features/steps of the claim at issue. *See, e.g., In re Dow Chemical*, 5 U.S.P.Q.2d 1529, 1531 (Fed. Cir. 1988); *In re Keller*, 208 U.S.P.Q.2d 871, 881 (C.C.P.A. 1981).

a. Independent Claim 17

Claim 17 is amended to recite "a processor configured to…enable a continuous sequence of variably sized user-selectable ***index ranges***… the size of each of the index ranges based on a predetermined threshold number of media titles" (emphasis added). Applicant respectfully submits that the proposed combination fails to teach, disclose, or suggest at least this feature. *LaJoie et al.* appears to disclose a single sequence of indices, one index for each

letter (letters A, B, C, D, and E in Fig. 22), rather than "index ranges" as recited in claim 17. Turning to *Eick et al.*, Applicant will assume, for the sake of argument, that the rows in FIGs. 16-19 of *Eick et al.* are ranges. Even so, *Eick et al.* does not teach the rows are variably sized, much less that the size of each row is "based on a predetermined threshold number of media titles".

In discussing the teachings of *Eick et al.*, the Office Action (p. 7) alleges that "[s]ince the threshold is a variable (MAXDISPLAY) (Col. 91-92), each of the indices is variably sized". Applicant respectfully submits that the premise of the allegation is faulty, and as such the conclusion is unsupported. First, the Office Action has not shown that MAXDISPLAY in the source code appearing at Col. 91-92 of *Eick et al.* corresponds to the claimed "threshold". The only reference to MAXDISPLAY in the cited portion of the code is a comment describing NUMDISPLAY as "Number of items in close up". Applicant submits that this single cryptic reference does not teach that MAXDISPLAY is a threshold, or has anything to do with a threshold. Second, the single appearance of MAXDISPLAY in the cited source code is a declaration of MAXDISPLAY as a ***constant value***, which is the opposite of "variably sized".

Eick et al. does disclose, in connection with the screens in FIGs. 15-19, that each rows has no more than a fixed number of entries. ("First, all alphabetic titles are sorted into groups of five or less"; *Eick et al.*, Col. 9, lines 60-61.) *Eick et al.* further explains that the number of entries per row is small enough to allow the viewer to "make a reasoned selection therefrom" (Col. 2, lines 30-40.) Applicant respectfully submits, however, that this is not the same as teaching variably sized rows: since the alphabet has a fixed number of letters N, and there are R rows, the number of entries per row is not variable, but is fixed at N/R. Furthermore, even assuming (for the sake of argument) that the rows in *Eick et al.* are variably sized, *Eick et al.* does <u>not</u> teach that the size is related to a "number of media titles" as required by claim 17.

Turning to the final reference in the combination, Applicant can find no feature in *Young et al.* which corresponds to "variably sized user-selectable index ranges". Accordingly, the

proposed combination of *LaJoie et al.* in view of *Eick et al.* and further in view of *Young et al.* does not teach at least the above-described features recited in claim 17. Therefore, a *prima facie* case establishing an obviousness rejection has not been made, and the rejection should be withdrawn.

b. Dependent Claims 18, 21-23, 25-27, 46-47, 49-51, and 56

Since independent claims 1, 2, and 17 are allowable, Applicant respectfully submits that dependent claims 18, 21-23, 25-27, 46-47, 49-51, and 56 are allowable for at least the reason that each depends from an allowable claim. *In re Fine*, 837 F.2d 1071, 5 U.S.P.Q. 2d 1596, 1598 (Fed. Cir. 1988). Therefore, Applicant respectfully requests that the rejection of dependent claims 18, 21-23, 25-27, 46-47, 49-51, and 56 be withdrawn.

4. Rejection of Claims 1-5, 32, 34-35, 38-45, 52-55, and 57-59 under 35 U.S.C. §103

Claims 1-5, 32, 34-35, 38-45, 52-55, and 57-59 are rejected under §103(a) as allegedly obvious over *LaJoie et al.* (U.S. 5,850,218) in view of *Rubinstein* (U.S. 5,721,897). Applicant respectfully traverses this rejection. It is well established at law that, for a proper rejection of a claim under 35 U.S.C. §103 as being obvious based upon a combination of references, the cited combination of references must disclose, teach, or suggest (either implicitly or explicitly) all elements/features/steps of the claim at issue. *See, e.g., In re Dow Chemical*, 5 U.S.P.Q.2d 1529, 1531 (Fed. Cir. 1988); *In re Keller*, 208 U.S.P.Q.2d 871, 881 (C.C.P.A. 1981).

a. Independent Claims 1 and 59

Claims 1 and 59 are amended to recite "configuring each index in a continuous sequence of variably sized user-selectable ***index ranges***…the size of each of the index ranges based on a predetermined threshold number of media titles" (emphasis added). Applicant respectfully submits that the proposed combination fails to teach, disclose, or suggest at least this feature. *LaJoie et al.* appears to disclose a single sequence of indices, one index for each

letter (letters A, B, C, D, and E in Fig. 22), rather than "index ranges" as recited in claims 1 and 59. Turning to *Rubinstein*, Applicant will assume, for the sake of argument, that the tabbed indices 512 in FIG. 5 correspond to "index ranges", such that 0-9 is a range, A is a range, M-O is a range, *etc*. However, as discussed in the Office Action (p. 26), the size of a range approaches the average number of information items which start with the alphanumeric character. Thus, the comparison is against a ***computed*** average rather than a "predetermined threshold" as recited in claims 1 and 59.

Accordingly, the proposed combination of *LaJoie et al.* in view of *Rubinstein* does not teach at least the above-described features recited in claims 1 and 59. Therefore, a *prima facie* case establishing an obviousness rejection has not been made, and the rejection should be withdrawn.

b. Independent Claim 2

Claim 2 is amended to recite "determining a range of values… corresponding to each index in a continuous sequence of variably sized user-selectable ***index ranges***, the size of each of the index ranges based on a predetermined threshold number of media titles" (emphasis added). Applicant respectfully submits that the proposed combination fails to teach, disclose, or suggest at least this feature. *LaJoie et al.* appears to disclose a single sequence of indices, one index for each letter (letters A, B, C, D, and E in Fig. 22), rather than "index ranges" as recited in claim 2. Turning to *Rubinstein*, Applicant will assume, for the sake of argument, that the tabbed indices 512 in FIG. 5 correspond to "index ranges", such that 0-9 is a range, A is a range, M-O is a range, *etc*. However, as discussed in the Office Action (p. 26), the size of a range approaches the average number of information items which start with the alphanumeric character. Thus, the comparison is against a ***computed*** average rather than a "predetermined threshold" as recited in claim 2.

Accordingly, the proposed combination of *LaJoie et al.* in view of *Rubinstein* does not teach at least the above-described features recited in claim 2. Therefore, a *prima facie* case establishing an obviousness rejection has not been made, and the rejection should be withdrawn.

c. Independent Claim 52

Claim 52 is amended to recite "a processor configured to…determine a range of values…corresponding to each index in a continuous sequence of variably sized user-selectable ***index ranges***, the size of each of the index ranges based on a predetermined threshold number of media titles" (emphasis added). Applicant respectfully submits that the proposed combination fails to teach, disclose, or suggest at least this feature. *LaJoie et al.* appears to disclose a single sequence of indices, one index for each letter (letters A, B, C, D, and E in Fig. 22), rather than "index ranges" as recited in claim 52. Turning to *Rubinstein*, Applicant will assume, for the sake of argument, that the tabbed indices 512 in FIG. 5 correspond to "index ranges", such that 0-9 is a range, A is a range, M-O is a range, *etc.* However, as discussed in the Office Action (p. 26), the size of a range approaches the average number of information items which start with the alphanumeric character. Thus, the comparison is against a ***computed*** average rather than a "predetermined threshold" as recited in claim 52.

Accordingly, the proposed combination of *LaJoie et al.* in view of *Rubinstein* does not teach at least the above-described features recited in claim 52. Therefore, a *prima facie* case establishing an obviousness rejection has not been made, and the rejection should be withdrawn.

d. Dependent Claims 3-5, 32, 34-35, 38-45, 53-55, and 57-58

Since independent claims 1, 2, and 52 are allowable, Applicant respectfully submits that claims 3-5, 32, 34-35, 38-45, 53-55, and 57-58 are allowable for at least the reason that each depends from an allowable claim. *In re Fine*, 837 F.2d 1071, 5 U.S.P.Q. 2d 1596, 1598 (Fed.

Cir. 1988). Therefore, Applicant respectfully requests that the rejection of claims 3-5, 32, 34-35, 38-45, 53-55, and 57-58 be withdrawn.

5. Rejection of Claims 16 and 48 under 35 U.S.C. §103

Claims 16 and 48 are rejected under §103(a) as allegedly obvious over *LaJoie et al.* (U.S. 5,850,218) in view of *Rubinstein* (U.S. 5,721,897) and *Knudson et al.* (U.S. 2005/02024387). Applicant respectfully traverses this rejection. The addition *Knudson et al.* of does not cure the deficiencies of *LaJoie et al.* and *Rubinstein* as discussed above in connection with independent claims 1 and 2. Therefore, since claims 1 and 2 are allowable, Applicant respectfully submits that claims 16 and 48 are allowable for at least the reason that each depends from an allowable claim. *In re Fine*, 837 F.2d 1071, 5 U.S.P.Q. 2d 1596, 1598 (Fed. Cir. 1988). Therefore, Applicant respectfully requests that the rejection of claims 16 and 48 be withdrawn.

6. Rejection of Claims 17-18, 21-23, 25-27, 46-47, 49-51, and 56 under 35 U.S.C. §103

Claims 17-18, 21-23, 25-27, 46-47, 49-51, and 56 are rejected under §103(a) as allegedly obvious over *LaJoie et al.* (U.S. 5,850,218) in view of *Rubinstein* (U.S. 5,721,897) and *Young et al.* (U.S. 5,808,608). Applicant respectfully traverses this rejection. The addition of *Young et al.* does not cure the deficiencies of *LaJoie et al.* and *Rubinstein* as discussed above in connection with independent claims 1, 2, 17, and 52. Therefore, since claims 1, 2, 17, and 52 are allowable, Applicant respectfully submits that claims 17-18, 21-23, 25-27, 46-47, 49-51, and 56 are allowable for at least the reason that each depends from an allowable claim. *In re Fine*, 837 F.2d 1071, 5 U.S.P.Q. 2d 1596, 1598 (Fed. Cir. 1988). Therefore, Applicant respectfully requests that the rejection of claims 17-18, 21-23, 25-27, 46-47, 49-51, and 56 be withdrawn.

CONCLUSION

Applicant respectfully requests that all outstanding objections and rejections be withdrawn and that this application and presently pending claims 1-5, 16-18, 21-23, 25-27, 32, 34-35, and 38-59 be allowed to issue. Any statements in the Office Action that are not explicitly addressed herein are not intended to be admitted. In addition, any and all findings of inherency are traversed as not having been shown to be necessarily present. Furthermore, any and all findings of well-known art and official notice, or statements interpreted similarly, should not be considered well known since the Office Action does not include specific factual findings predicated on sound technical and scientific reasoning to support such conclusions. If the Examiner has any questions or comments regarding Applicant's response, the Examiner is encouraged to telephone Applicant's undersigned counsel.

Respectfully submitted,

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